

BOARD OF APPEALS CASE NO. 5104

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BEFORE THE

APPLICANTS: Million & Kathy Daneker

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ZONING HEARING EXAMINER

**REQUEST: Variance to allow a sunroom and
attached deck within the required rear yard setback;
1302 Allenby Court, Bel Air**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 11/29/00 & 12/6/00

HEARING DATE: January 17, 2001

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Record: 12/1/00 & 12/8/00

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Million and Kathy Daneker, are requesting a variance pursuant to Section 267-36B, Table V, and Section 267-23C(1)(a)(6) of the Harford County Code, to allow a sunroom with an attached deck within the required 35 foot rear yard setback for the sunroom (21 feet proposed) and 26 foot rear yard setback for the deck (15 feet proposed) in an R2/COS District.

The subject parcel is located at 1302 Allenby Court, Bel Air, Maryland 21014 and is more particularly identified on Tax Map 41, Grid 4D, Parcel 644, Lot 62. The parcel is a corner lot in Amyclae Estates, consists of 0.291 acres, is zoned R2/COS/Urban Residential with Conventional Open Space. The parcel is within the Third Election District.

Mr. Million Daneker appeared and testified that he and his wife own the subject parcel which he described as an irregularly shaped corner lot. Because of the lot configuration, the parcel is uniquely subject to two front yard and two side yard setbacks. He intends to add an upscale brick sunroom with deck to the existing house. Because of the placement of the house on the lot and the corner configuration, the Code requirements restrict any placement of such an addition anywhere on the lot without a variance. The proposed sunroom will be 16 feet by 22 feet, brick and window construction. It is only a corner of the sunroom that encroaches in the setback as shown on Attachment 3.

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The deck is approximately 16 feet by 10 feet and attaches to both the sunroom and house. The deck will be 21 feet from the property line. Mr. Daneker indicated that he plans to retire in the home and this addition will allow some additional living space for he and his wife. He presented architectural renderings of the proposed addition (Applicants Exhibit 1) which indicate that the addition will be aesthetically complementary to both the existing home and neighborhood. Mr. Daneker did not believe the addition would result in any adverse impact to neighboring properties and felt that others in Amyclae Estates had been granted similar approvals and had constructed sunrooms and decks.

Mrs. Kathy Daneker also appeared and echoed much of the testimony of her husband. The witness indicated that the addition was quite upscale and would be quite costly. She felt the addition would improve the appearance of the neighborhood and her home and would serve to enhance the property value of her residence. She agreed that no adverse impact would result from the approval of the addition as proposed. The witness also testified that she and her husband had submitted a request for approval to their Homeowner's Association and that the architectural committee of that body had granted their approval of the proposed sunroom and deck at the proposed location.

The Department of Planning and Zoning , in recommending approval of the subject request, stated in its staff report dated January 9, 2001 as follows:

“The subject property is a corner constrained by two (2) front yards. In addition, the dwelling was constructed at an angle and is oriented toward the corner. The neighborhood consists of large, 2-story dwellings. The subject dwelling is consistent with the other homes in the neighborhood. The proposed addition and deck would be built in an area that is currently enclosed by a split rail fence.

The requested variances should have no adverse impacts on adjacent properties and/or the intent of the Code.”

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Appearing in opposition to the request was Mr. Daniel Stimax who resides at 1301 Gibbs Court, Bel Air, MD, which is an adjoining property. Mr. Stimax indicated that he was quite surprised that the architectural committee approved such an addition. He testified that he was a past member of the architectural committee and when he served, such additions to the side of homes would be limited to additions over top of garages. Mr. Stimax felt that the properties are quite close and that his property will be adversely impacted if the request is granted. The witness introduced photographic evidence that depicts the location of his home to the subject parcel. The witness testified that there is a split rail fence on the subject parcel acting as a divider between his yard and the Applicants'. The witness stated that the corner of his home is approximately 22 feet from the fence. Mr. Stimax placed a great deal of emphasis on an earlier Board of Appeals Case wherein the witness claimed another Amyclae resident, also a corner lot situation, had requested a similar variance for a sunroom/deck, and had been denied by the Board of Appeals. According to the witness, that case acted as an earlier finding that such additions would routinely not be allowed by the Board of Appeals in the Amyclae Estates subdivision. While the witness could not recall the name of the Applicant in the former Board of Appeals case, he agreed to find out the details and later inform both the Hearing Examiner and Applicant. The witness also testified that there were no other additions in Amyclae similar to the one proposed by the Applicants herein.

CONCLUSION:

The Applicants are requesting a variance pursuant to Section 267-36B, Table V, and Section 267-23C(1)(a)(6) of the Harford County Code, to allow a sunroom with an attached deck within the required 35 foot rear yard setback for the sunroom (21 feet proposed) and 26 foot rear yard setback for the deck (15 feet proposed) in an R2/COS District.

Code Section 267-23C(1)(a)(6) provides:

“Unenclosed patios and decks: up to, but not to exceed, twenty-five percent (25%) of the side or rear yard requirement for the district. No accessory structure shall be located within any recorded easement area.”

The Harford County Code, pursuant to 267-11 permits variances and provides:

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“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.**
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”**

The subject parcel is uniquely configured. It is a corner lot subject to two front yards and to side yards. Unlike other parcels of similar size found within Amyclae Estates, the unique configuration of this parcel constrains the location of any reasonable additions to the existing home. Sunrooms and decks are common throughout this subdivision although, admittedly, the sunroom proposed by the Applicants is considerably more upscale than others generally found in the Bel Air area. The protestant, Mr. Stimax did call the Hearing Examiner’s office the day after the hearing and indicated that the earlier case upon which he relied was Board of Appeals Case No. 4939. Although the witness relied heavily on this case and claimed that it acted as precedent for denial of such applications, the Case was in fact decided in favor of the Applicant therein. In Case 4939, the Applicant, Kelley Crouse who resided at that time at 1302 Beckett Drive, Bel Air and within the Amyclae Estates subdivision, sought a variance to Section 267-36B, Table V, to construct an addition within the 35 foot rear yard setback. Her property was slightly larger than the subject property and was also a corner lot located at the intersection of Beckett Drive and Econ Drive. The house in Case 4939 was also situated at an angle. The Hearing Examiner found the parcel unique, the proposed addition not detrimental to adjoining property owners and held that approval of the request would not materially impair the purpose of the Code. Two persons appeared in that case in opposition to the application while the Department of Planning and Zoning supported approval. The Hearing Examiner’s decision in Case 4939, approving the variance, became final on September 27, 1999.

The Maryland Court of Special Appeals has provided guidance in matters of variance requests and described a two step analysis in determining whether such requests should

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be granted. According to the guidance provided by the Court, the variance process is a two step sequential process:

1. The first step requires a finding that the property whereon structures are to be placed(or uses conducted) is, in and of itself, unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property. If this finding cannot be made, the process stops and the variance must be denied. If, however, the first step results in a supportive finding of uniqueness or unusualness, then the second step in the process is taken.
2. The second step is a demonstration whether unreasonable hardship (or practical difficulty) results from the disproportionate impact of the ordinance caused by the property's uniqueness exists." Cromwell v. Ward, 102 Md. App. 691 (1995).

In the instant case, the uniqueness of the property has been demonstrated by the corner configuration and the angular placement of the house. While the lot is similar in overall size to other lots in the immediate neighborhood, including adjoining lots, this lot is subjected to two front yards and two side yards, severely limiting the building envelope in size and location. There was no testimony adduced that leads to the conclusion that this lot is not unique or unusual, thus, the first test of Cromwell, has been met.

Having determined that the Applicant has met the first step of the test. It must be determined whether an unreasonable hardship or practical difficulty would result if the Application were denied. If it were not for the configuration of this lot as a corner lot, the variance would not be needed and the Applicant could build his sunroom without the need for these proceeding. Other property owners within Amyclae Estates, not situated on a corner, have a much greater degree of flexibility in this regard than a corner lot owner. This was recognized by the Hearing Examiner in Case 4939 and generally in other cases involving corner lots. If the variance were denied, this Applicant would be denied property rights commonly enjoyed by other neighboring property owners. Such a holding would be both arbitrary and capricious.

The Hearing Examiner recommends approval of the Applicant's request subject to the following conditions:

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1. The Applicant obtain all necessary permits and inspections.
2. That the Applicant prepare and submit, along with the request for a building permit, a plan of screening to the Department of Planning and Zoning for their review and approval.
3. That the Applicant not further encroach into the setbacks beyond those requested herein.

Date JANUARY 26, 2001

**William F. Casey
Zoning Hearing Examiner**